

John Edmonds

From: John Edmonds
Sent: Wednesday, February 08, 2012 7:05 PM
To: 'Bryan Atkinson'; Steve Daniels; 'bcraft@findlaycraft.com'; 'efindlay@findlaycraft.com'; Josh Long; Michael Collins; Andrew Tower; spangler@spanglerlawpc.com; 'James.Geringer@klarquist.com'; 'salumeh.loesch@klarquist.com'; 'jflee@ltpacificlaw.com'; 'allen@cclaw.com'; 'hilton@cclaw.com'; 'agabrielson@marshallip.com'; 'bhorton@marshallip.com'; 'tduston@marshallip.com'; 'dwd@dmlegal.com'; 'gleung@mcguirewoods.com'; 'tstinertoomer@mcguirewoods.com'; Davidson, Patricia L.; 'herbert.hammond@tklaw.com'; 'Patel'; 'CCUNEO@PARSONSBEHLE.COM'; 'DHERBERHOLZ@PARSONSBEHLE.COM'; 'trey@yw-lawfirm.com'; 'debby@yw-lawfirm.com'; 'esutton@ezrasutton.com'; 'de Gyarfas, Victor'; 'Sobaje, Justin M.'; 'michaelsmith@siebman.com'; Bryan Farney; Jacqueline Lu; Kathy Terry
Subject: RE: Adjustacam v. Amazon et al: Plaintiff's Late-filed claim construction brief

Bryan,

It's confirmed that we're not agreeable to what you suggest. We'll just let the Court decide this.

John J. Edmonds

CEIP

713.364.5291

From: Bryan Atkinson [mailto:BATkinson@farneydaniels.com]
Sent: Wednesday, February 08, 2012 6:58 PM
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Subject: RE: Adjustacam v. Amazon et al: Plaintiff's Late-filed claim construction brief

To clarify the record, you have misstated our position. Our proposal was that the retailer defendants be allowed to attend via telephone. We never suggested that the retailers "skip" the mediation. Please confirm that you oppose granting the retailer Defendants the ability to attend mediation by telephone in exchange for Defendants agreeing to retroactively allow Adjustacam the extra time you took for your reply brief.

Bryan Atkinson
Farney Daniels LLP
(512) 582-2836

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From: John Edmonds [mailto:jedmonds@cepiplaw.com]
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Subject: RE: Adjustacam v. Amazon et al: Plaintiff's Late-filed claim construction brief

The record on this is clear. We'll get our opposed motion on file tonight.

John J. Edmonds

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From: Bryan Atkinson [mailto:BAtkinson@farneydaniels.com]
Sent: Wednesday, February 08, 2012 6:51 PM
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Subject: RE: Adjustacam v. Amazon et al: Plaintiff's Late-filed claim construction brief

John,

As I explained in my original email, we merely sought a reasonable accommodation for the retailer defendants to minimize costs. The prejudice to our preparations remains either way, and nothing short of cancelling Markman can cure the prejudice Adjustacam's delay has caused.

Bryan Atkinson
Farney Daniels LLP
(512) 582-2836

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Subject: RE: Adjustacam v. Amazon et al: Plaintiff's Late-filed claim construction brief

Bryan,

Thanks for getting back. I'd suggest we have a phone call to do a formal meet and confer, but if you don't want to do that, when I'll accept your email as an indication of opposition by the defendants, and we'll file the opposed motion.

We'll also be sure to inform the Court that the Defendants would not be prejudiced if the Retailer Defendants could skip the Court-ordered mediation. Feel free to explain that one to the Court.

John J. Edmonds

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From: Bryan Atkinson [mailto:BAtkinson@farneydaniels.com]

Sent: Wednesday, February 08, 2012 6:33 PM

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Subject: RE: Adjustacam v. Amazon et al: Plaintiff's Late-filed claim construction brief

John,

Our position is that waiting almost a full week to respond to my email, and then demanding defendants agree on less than one days' notice to a motion that accommodates only plaintiff with no reciprocal incentive for Defendants is inappropriate. Notably, this demand comes almost a week after you were fully informed that your reply brief was late. Your continued delays prejudice Defendants' Markman preparations, and likely prejudice the Court's own preparations. If you insist on filing a motion today, you must file it opposed.

Bryan Atkinson
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Sent: Wednesday, February 08, 2012 6:21 PM

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Subject: RE: Adjustacam v. Amazon et al: Plaintiff's Late-filed claim construction brief

Apologies, my mind is partially stuck in another case that's about to go to trial.

What I meant to say is the following:

We appreciate that some people may be traveling today, but we'd appreciate the courtesy of a response to *AdjustaCam's* request below. For anyone who opposes the relief sought, we're still available to meet and confer all evening and tomorrow morning as well.

We await your response.

Thanks,

John J. Edmonds

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From: Steve Daniels [mailto:SDaniels@farneydaniels.com]

Sent: Wednesday, February 08, 2012 6:15 PM

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Subject: RE: Adjustacam v. Amazon et al: Plaintiff's Late-filed claim construction brief

John:

I'm not following your question. Who is iMac?

Steve

From: John Edmonds [mailto:jedmonds@cepiplaw.com]

Sent: Wednesday, February 08, 2012 6:13 PM

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Subject: RE: Adjustacam v. Amazon et al: Plaintiff's Late-filed claim construction brief

Defense Counsel,

We appreciate that some people may be traveling today, but we'd appreciate the courtesy of a response to iMac's request below. For anyone who opposes the relief sought, we're still available to meet and confer all evening and tomorrow morning as well.

We await your response.

Thanks,

John J. Edmonds

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From: John Edmonds

Sent: Wednesday, February 08, 2012 9:50 AM

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'de Gyarfaz, Victor'; 'Sobaje, Justin M.'; 'michaelsmith@siebman.com'; 'Bryan Farney'; 'Steve Daniels'; 'Jacqueline Lu';
'Kathy Terry'

Subject: RE: Adjustacam v. Amazon et al: Plaintiff's Late-filed claim construction brief

Bryan - I've been tied with a pretrial hearing and expert reports, but I'm back in town and have investigated this deadline issue. Since we extended the Defendants' response from January 13th to January 17th by agreement, our paralegal erroneously assumed that our reply had been extended from January 27th to January 31st as well. Thus, the deadline was mistakenly mis-calendared on our end. Regarding your suggestion that the "Retailer Defendants" not oppose an extension in exchange for AdjustaCam agreeing they need not attend the Court-ordered mediation, that's not something we agree with.

Defense Counsel – In view of the fact that we gave the Defendants a four day extension, we request the same accommodation. Please let us know by the close of business today whether anyone opposes this extension. If you do, then we're available any time today for a meet and confer with any defendants who oppose. Just let us know the time you want to meet and confer, and we'll do a call then. At the end of the day we'll be filing either an opposed or an unopposed motion.

John J. Edmonds

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From: John Edmonds

Sent: Thursday, February 02, 2012 2:06 PM

To: 'Bryan Atkinson'

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Subject: RE: Adjustacam v. Amazon et al: Plaintiff's Late-filed claim construction brief

Bryan,

I wasn't aware that our Reply was late. I will investigate and get back with you.

On a somewhat related note, we're putting the finishing touches on the PR 4-5 chart. We took the defendants' proposed constructions from their brief, and for the terms not briefed, we took the constructions from the defendants' PR 4-2 disclosure.

Please stand by. We should be circulating the draft in just a few minutes. Hopefully it will not be controversial, since basically just a big cut and paste.

John J. Edmonds

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From: Bryan Atkinson [mailto:BAtkinson@farneydaniels.com]

Sent: Thursday, February 02, 2012 1:08 PM

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Subject: Adjustacam v. Amazon et al: Plaintiff's Late-filed claim construction brief

John,

We received Adjustacam's reply claim construction brief through ECF shortly before midnight on Tuesday, January 31. The deadline for filing Adjustacam's claim construction brief was Friday, January 27. As far as I know you never contacted HP regarding an extension, and I am not aware of any agreement between any other defendant and Adjustacam for an extension to Adjustacam's deadline for filing Adjustacam's reply claim construction brief, which is untimely and contrary to the Court's docket control order.

In the continued spirit of sensible cooperation in this case, we would be willing to waive our objections to Adjustacam's late reply if Adjustacam will agree to a motion waiving the requirement of personal attendance by representatives for the retailer defendants at the upcoming mediation. As you know, either all or substantially all of the products accused of infringement by the retailers have already been the subject to a mediation by parties which supply the same accused products to the retailers in this case. As such, because these accused products have already been the subject of one mediation, the costs of personal attendance by the retailers is disproportionate to the value of personal attendance leading to successful resolution of the pending conflict in this instance. Thus, we believe this would be a reasonable accommodation in exchange for Defendants' waiving our right to object to Plaintiff's untimely filed reply brief insofar as your lateness in filing your reply prejudices our ability to adequately prepare for the imminent Markman hearing next Thursday.

Regards,
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